JASIN vs. TIAWAN.

[App. Civil Juris. (Horne, J.) March 29, 1941]

Customary Law—Adat—Claims to Charian Laki Bini.

The respondent, nine years after her divorce from the appellant, brought a claim for half of his land according to the adat because the land was their **charian laki bini.**

Held, that claims to **charian laki bini** must be brought at the time of the divorce and ~~that~~ therefore in the absence of agreement or misrepresentation at the time the wife could not succeed in her claim to the land after the divorce.

Cases referred to:—

(1) *Rahim v. Sintah,* Taylor Customary Law of Rembau p. 114.

(2) *Si-Alang v. Samat,* Taylor Customary Law of Rembau p. 115.

C. M. P. Pillai for the Appellant.
Muthu-Ramalingam for the Respondent.

Cur. Adv. Vult.

Horne, J.—In the absence of any proof of special custom in the district I applied the following cases viz: *Rahim v. Sintah,*[1] which decided that claims to *charian laki bini* must be made at the time of the divorce and that the division should be made before the completion of the divorce, and *Si-Alang v. Samat*[2] which decided that the division can be enforced afterwards provided the claim was made at the time of divorce and assented to by the other party.

In the latter case the litigation is really to enforce a promise to transfer the half share, which was the amount agreed to be due to the wife on divorce, to the children of the marriage when the trees came into bearing. The report does not show how long after the promise the land case was brought, but to such a claim I think Article 47 would apply "a promise to do anything at a specified time" and that that suit must have been brought within three years of the time the trees came into bearing.

These divisions of property upon divorce under customary law are strictly speaking part of the customary law of divorce and are not part of the land law of the Federated Malay States, but the latter law is applied in giving legal effect to the customary right. The true rule of the *adat* appears to be that the whole matter of the divorce is settled and done with there and then. The husband takes his half and goes back to his tribe; the wife takes her half and remains with her tribe. Consequently if a woman accepts the position of being divorced and does not obtain a division she can make no claim later. Limitation of suits appears to have no application directly to this division on divorce under *adat.*

In this appeal it will be observed that the divorce was in 1931 and that the wife obtained no division at the time of the divorce and no promise. The most that can be said in her favour was that there was a dispute, though even that is putting the matter rather favourably for her. Nine years after she brings a claim for half of her former husband's land "according to the *adat* because that is our *charian laki bini.*" The '*adat*' is laid down in *Rahim v. Sintah,*[1] and Tiawan should have insisted on a division at the time of divorce. She did not do so and says she was put off, but that is not enough. She has no right unless she claims at the time. If her claim was dependent upon a misrepresentation made to her by her former husband at the time of divorce she might be able to bring a suit within three years under Article 37 of the Limitation Enactment.

But there is no evidence that she was deceived as to her rights or anything of that nature. It is simply a case of a woman waiting until the rubber trees have matured and then making a claim, and upon the authorities quoted and upon principle no Court should entertain it.

The appeal is therefore allowed and the Collector's order set aside.

Appeal allowed.